

REFINITIV

DELTA REPORT

10-Q

MITQ - MOVING IMAGE TECHNOLOGIES

10-Q - DECEMBER 31, 2024 COMPARED TO 10-Q - SEPTEMBER 30, 2024

The following comparison report has been automatically generated

TOTAL DELTAS	1086
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<div>CHANGES</div>	125
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<div>DELETIONS</div>	741
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<div>ADDITIONS</div>	220
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended **September 30, December 31, 2024**

or

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number: **001-40511**

Moving iMAGE Technologies, Inc.
(Exact name of Registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

85-1836381

(I.R.S. Employer Identification No.)

**17760 Newhope Street,
Fountain Valley, California**

(Address of principal executive offices)

92708

(Zip Code)

(714) 751-7998

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.00001 par value	MITQ	NYSE American

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐.

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to

submit such files). Yes ☒ No ☐.

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐

Non-accelerated filer ☒

Accelerated filer ☐

Smaller reporting company ☒

Emerging growth company ☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒.

As of **November 14, 2024** **February 13, 2025**, there were **9,896,850** shares of the registrant's common stock, par value \$0.00001 per share, outstanding.

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MOVING IMAGE TECHNOLOGIES, INC.

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PART I – FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

MOVING IMAGE TECHNOLOGIES, INC. CONDENSED CONSOLIDATED BALANCE SHEETS (in thousands except share and per share amounts)

	September 30, 2024 (unaudited)	June 30, 2024 (unaudited)	December 31, 2024 (unaudited)	June 30, 2024 (unaudited)
Assets				
Current Assets:				
Cash	\$ 5,246	\$ 5,278	\$ 5,316	\$ 5,278
Accounts receivable, net	1,027	1,048	749	1,048
Inventories, net	2,616	3,117	2,121	3,117
Prepaid expenses and other	312	470	202	470
Total Current Assets	9,201	9,913	8,388	9,913
Long-Term Assets:				
Right-of-use asset	1,074	144	1,206	144
Property and equipment, net	24	28	21	28
Intangibles, net	407	422	393	422
Other assets	16	16	23	16
Total Long-Term Assets	1,521	610	1,643	610

Total Assets	\$ 10,722	\$ 10,523	\$ 10,031	\$ 10,523
Liabilities And Stockholders' Equity				
Current Liabilities:				
Accounts payable	\$ 1,832	\$ 2,261	\$ 1,642	\$ 2,261
Accrued expenses	347	320	406	320
Customer refunds	398	399	423	399
Customer deposits	1,309	1,651	1,057	1,651
Lease liability—current	170	151	206	151
Unearned warranty revenue	54	31	65	31
Total Current Liabilities	4,110	4,813	3,799	4,813
Long-Term Liabilities:				
Lease liability—non-current	922	—	1,037	—
Total Long-Term Liabilities	922	—	1,037	—
Total Liabilities	5,032	4,813	4,836	4,813
Stockholders' Equity				
Common stock, \$0.00001 par value, 100,000,000 shares authorized, 9,896,850 and 9,896,850 shares issued and outstanding at September 30, 2024 and June 30, 2024, respectively	—	—		
Common stock, \$0.00001 par value, 100,000,000 shares authorized, 9,896,850 and 9,896,850 shares issued and outstanding at December 31, 2024 and June 30, 2024, respectively			—	—
Additional paid-in capital	11,971	11,965	12,003	11,965
Accumulated deficit	(6,281)	(6,255)	(6,808)	(6,255)
Total Stockholders' Equity	5,690	5,710	5,195	5,710
Total Liabilities and Stockholders' Equity	\$ 10,722	\$ 10,523	\$ 10,031	\$ 10,523

The accompanying notes are an integral part of these condensed consolidated financial statements.

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MOVING IMAGE TECHNOLOGIES, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands except share and per share amounts)
(unaudited)

Three Months Ended

	September 30,	
	2024	2023
Net sales	\$ 5,252	\$ 6,635
Cost of goods sold	3,880	4,816
Gross profit	1,372	1,819
Operating expenses:		
Research and development	61	67
Selling and marketing	529	542
General and administrative	850	826
Total operating expenses	1,440	1,435
Operating (loss) income	(68)	384
Other income (expense)		
Interest and other income, net	43	55
Total other income	43	55
Net (loss) income	\$ (25)	\$ 439
Weighted average shares outstanding: basic and diluted (Note 5)	9,896,850	10,685,778
Net (loss) income per common share basic and diluted	\$ (0.00)	\$ 0.04

	Three Months Ended		Six Months Ended	
	December 31,		December 31,	
	2024	2023	2024	2023
Net sales	\$ 3,441	\$ 3,265	\$ 8,693	\$ 9,900
Cost of goods sold	2,505	2,506	6,386	7,322
Gross profit	936	759	2,307	2,578
Operating expenses:				
Research and development	47	72	109	139
Selling and marketing	462	628	991	1,170
General and administrative	988	889	1,836	1,716
Total operating expenses	1,497	1,589	2,936	3,025
Operating (loss)	(561)	(830)	(629)	(447)
Other income (expense)				
Interest and other income, net	34	36	77	92
Total other income	34	36	77	92
Net (loss)	\$ (527)	\$ (794)	\$ (552)	\$ (355)
Weighted average shares outstanding: basic and diluted (Note 2)	9,896,850	10,655,686	9,896,850	10,670,732

Net (loss) income per common share basic and diluted	\$ (0.05)	\$ (0.07)	\$ (0.06)	\$ (0.03)
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The accompanying notes are an integral part of these condensed consolidated financial statements.

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MOVING IMAGE TECHNOLOGIES, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
(in thousands except for share amounts)
(unaudited)

Three months ended September 30, 2024					
	Common Stock		Additional	Accumulated	
	Shares	Amount	Paid-In Capital	Deficit	Total
Balance as of June 30, 2024	9,896,850	\$ —	\$ 11,965	\$ (6,255)	\$ 5,710
Grant of options to officer	—	—	5	—	5
Net loss	—	—	—	(25)	(25)
Balance as of September 30, 2024	9,896,850	\$ —	\$ 11,971	\$ (6,281)	\$ 5,690
Three months ended September 30, 2023					
	Common Stock		Additional	Accumulated	
	Shares	Amount	Paid-In Capital	Deficit	Total
Balance as of June 30, 2023	10,685,778	\$ —	\$ 12,462	\$ (4,883)	\$ 7,579
Issuance of stock to employees	—	—	5	—	5
Net loss	—	—	—	439	439
Balance as of September 30, 2023	10,685,778	\$ —	\$ 12,467	\$ (4,444)	\$ 8,023
Three and Six months ended December 30, 2024					
	Common Stock		Additional	Accumulated	
	Shares	Amount	Paid-In Capital	Deficit	Total
Balance as of June 30, 2024	9,896,850	\$ —	\$ 11,965	\$ (6,255)	\$ 5,710

Grant of options to officer	—	—	5	—	5
Net loss	<u>—</u>	<u>—</u>	<u>—</u>	<u>(25)</u>	<u>(25)</u>
Balance as of September 30, 2024	9,896,850	\$ —	\$ 11,970	\$ (6,281)	\$ 5,690
Grant of options to officer	—	—	32	—	32
Net loss	<u>—</u>	<u>—</u>	<u>—</u>	<u>(527)</u>	<u>(527)</u>
Balance as of December 31, 2024	<u>9,896,850</u>	<u>\$ —</u>	<u>\$ 12,003</u>	<u>\$ (6,808)</u>	<u>\$ 5,195</u>
Three and Six months ended December 31, 2023					
Balance June 30, 2023	10,685,778	\$ —	\$ 12,462	\$ (4,883)	\$ 7,579
Grant of options to officer	—	—	5	—	5
Net profit	<u>—</u>	<u>—</u>	<u>—</u>	<u>439</u>	<u>439</u>
Balance as of September 30, 2023	10,685,778	\$ —	\$ 12,467	\$ (4,444)	\$ 8,023
Grant of options to officer	—	—	5	—	5
Share buyback and cancellation	(109,135)	—	(101)	—	(101)
Net loss	<u>—</u>	<u>—</u>	<u>—</u>	<u>(794)</u>	<u>(794)</u>
Balance as of December 31, 2023	<u>10,576,643</u>	<u>\$ —</u>	<u>\$ 12,371</u>	<u>\$ (5,238)</u>	<u>\$ 7,133</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

MOVING IMAGE TECHNOLOGIES, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)
(unaudited)

	Three Months Ended	
	September 30	
	2024	2023
Cash flows from operating activities:		
Net (loss) income	\$ (25)	\$ 439
Adjustments to reconcile net (loss)/income to net cash (used in) operating activities:		
Provision for credit losses	11	1
Inventory reserve	80	80
Depreciation expense	4	3
Amortization expense	15	14
Right-of-use amortization	58	66
Stock option compensation expense	5	5
Changes in operating assets and liabilities		
Accounts receivable	10	(1,138)
Inventories	421	(413)
Prepaid expenses and other	158	203
Accounts payable	(429)	1,405
Accrued expenses and customer refunds	26	225
Unearned warranty revenue	23	(14)
Customer deposits	(342)	(1,016)
Lease liabilities	(47)	(67)
Net cash (used in) operating activities	(32)	(207)
Cash flows from investing activities		
Purchases of property and equipment	—	(1)
Net cash (used in) investing activities	—	(1)
Net (decrease) increase in cash	(32)	(208)
Cash, beginning of the period	5,278	6,616
Cash, end of the period	<u>\$ 5,246</u>	<u>\$ 6,408</u>
Non-cash investing and financing activities:		
Right-of-use assets from lease modification	\$ (988)	\$ —
	Six Months Ended	
	December 31	
	2024	2023
Cash flows from operating activities:		
Net (loss)	\$ (552)	\$ (355)
Adjustments to reconcile net (loss) to net cash provided by (used in) operating activities:		

Provision for credit losses	19	4
Inventory reserve	163	384
Depreciation expense	7	5
Amortization expense	29	29
Right-of-use amortization	133	133
Stock option compensation expense	37	10
Changes in operating assets and liabilities		
Accounts receivable	280	(237)
Inventories	833	(424)
Prepaid expenses and other	260	(503)
Accounts payable	(619)	(315)
Accrued expenses and customer refunds	111	64
Unearned warranty revenue	34	14
Customer deposits	(594)	(38)
Lease liabilities	(103)	(135)
Net cash provided by (used in) operating activities	<u>38</u>	<u>(1,364)</u>
Cash flows from investing activities		
Purchases of property and equipment	<u>—</u>	<u>(12)</u>
Net cash (used in) investing activities	<u>—</u>	<u>(12)</u>
Cash flows from financing activities		
Stock Buyback	<u>—</u>	<u>(101)</u>
Net cash (used in) financing activities	<u>—</u>	<u>(101)</u>
Net increase (decrease) in cash	38	(1,477)
Cash, beginning of the period	<u>5,278</u>	<u>6,616</u>
Cash, end of the period	<u>\$ 5,316</u>	<u>\$ 5,139</u>
Non-cash investing and financing activities:		
Right-of-use assets from new lease	\$ (207)	\$ —
Right-of-use assets from lease modification	\$ (988)	\$ —

The accompanying notes are an integral part of these condensed consolidated financial statements.

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NOTE 1 — BUSINESS ACTIVITY AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Organization: Moving iMage Technologies, Inc., a Delaware corporation, together with its wholly owned subsidiaries unless the context indicates otherwise, the (“Company”) was incorporated in June 2020. The Company, through its wholly owned subsidiary, Moving iMage Technologies, LLC (“MiT LLC”) and MiT LLC’s wholly-owned subsidiary, Moving iMage Acquisition Co., (DBA “Caddy

Products”), designs, integrates, installs and distributes proprietary and custom designed equipment as well as off the shelf cinema products needed for contemporary cinema requirements. The Company also offers single source solutions for cinema design, procurement, installation and service to the creative and production communities for screening, digital intermediate and other critical viewing rooms. Additionally, the Company offers a wide range of technical, design and consulting services such as custom engineering, systems design, integration and installation, and digital technology, as well as software solutions for operations enhancement and theatre management. The Company also provides turnkey furniture, fixture and equipment services to commercial cinema exhibitors for new construction and remodels including design, consulting, installation and project management as well as procurement of seats, lighting, acoustical treatments, screens, projection and sound.

Moving iMage Acquisition Co. (DBA “Caddy Products”) designs, develops and manufactures innovative products for the entertainment, cinema, grocery, worship, restaurant, sports and restroom industries.

Impact of the COVID-19 Pandemic: The COVID-19 pandemic has had an unprecedented impact on the world and the movie exhibition industry. The social and economic effects have been widespread. At various points during the pandemic, authorities around the world imposed measures intended to control the spread of COVID-19, including stay-at-home orders and restrictions on large public gatherings, which caused movie theaters in countries around the world to temporarily close. The repercussions of the COVID-19 global pandemic resulted in a significant impact to our customers, specifically those in the entertainment and cinema industries. As a result, the Company implemented various cash preservation strategies, including, but not limited to, temporary personnel and salary reductions, halting non-essential operating and capital expenditures, and negotiating modified timing and/or abatement of contractual payments with landlords and other major suppliers.

Throughout 2020 and through 2022 the theatres reopened as soon as local restrictions, and the status of the COVID-19 pandemic would allow. As of September 30, 2024 December 31, 2024, a large majority of domestic and international theatres were open. The industry's recovery to historical levels of new film content, both in terms of the number of new films and box office performance, is still underway, as the industry also continues to adjust to evolving theatrical release windows, competition from streaming and other delivery platforms, supply chain delays, inflationary pressures, labor shortages, wage rate pressures and other economic factors.

Based on the management's current estimates, of recovery, it believes it will generate sufficient cash to sustain operations for a period of 12 months from the issuance of these financial statements. Nonetheless, the COVID-19 pandemic has had, and continues to have, adverse effects on the Company's business, results of operations, cash flows and financial condition.

Principles of Consolidation: The condensed consolidated financial statements include the accounts of MiT Inc., its wholly owned subsidiary, MiT LLC, and MiT LLC's wholly owned subsidiary, Moving iMage Acquisition Co., (DBA “Caddy Products”). All significant intercompany transactions and balances have been eliminated in consolidation.

Basis of Presentation: The Company's financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”).

Unaudited Interim Condensed Consolidated Financial Statements: The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with U.S. GAAP for interim financial information. Accordingly, they do not include all of the information and notes required by U.S. GAAP. However, in the opinion of the management of the Company, all adjustments of a normal recurring nature necessary for a fair presentation of the financial position and operating results have been included in these statements. These condensed consolidated financial statements should be read in conjunction with the Company's audited consolidated financial statements included in its Annual Report on Form 10-K for the fiscal year ended June 30, 2024, and with the disclosures and risk factors presented therein. The June 30, 2024 condensed consolidated balance sheet has been derived from the audited consolidated financial statements. Operating results for the three and six months ended September 30, 2024 December 31,

2024 are not necessarily indicative of the results that may be expected for any subsequent quarters or for the year ending June 30, 2025.

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NOTE 1 — BUSINESS ACTIVITY AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

Assets and Liabilities Measured on a Non-recurring Basis - In addition to assets and liabilities that are measured at fair value on a recurring basis, we also measure certain assets and liabilities at fair value on a nonrecurring basis. Our non-financial assets, including goodwill, intangible assets and property and equipment, are measured at fair value when there is an indication of impairment and the carrying amount exceeds the asset's projected undiscounted cash flows. These assets are recorded at fair value only when an impairment charge is recognized.

Use of Estimates: The preparation of condensed consolidated financial statements in conformity with U.S. GAAP requires management to make certain estimates and assumptions that affect the reported amounts of assets and liabilities (including sales returns, credit losses, inventory reserves, warranty reserves, purchase price allocation and asset impairments), disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ significantly from those estimates.

Concentration of Cash: The Company maintains its cash in bank accounts which, at times, may exceed federally insured limits. The Company has not experienced any losses in such accounts. Management believes the Company is not exposed to any significant credit risk on its cash balances.

Accounts Receivable: Accounts receivables receivable are carried at original invoice amount less allowance for credit losses. Management determines the allowance for credit losses by identifying troubled accounts and by using historical experience applied to an aging of accounts. Accounts receivables receivable are written off when deemed uncollectible. Recoveries of receivables previously written off are recorded when received. Accounts receivables receivable are considered to be past due if any portion of the receivable balance is outstanding for more than 90 days past the customer's granted terms. The Company does not charge interest on past-due balances or require collateral on its accounts receivable. As of September 30, 2024 December 31, 2024 and June 30, 2024 the allowance for credit losses is approximately \$389,000 \$397,000 and \$378,000, respectively.

Inventories: Inventories are stated at the lower of cost or net realizable value, with cost being determined on the first-in, first-out cost method of accounting. The Company purchases finished goods and materials to assemble kits in quantities that it anticipates will be fully used in the near term. Changes in operating strategy, customer demand, and fluctuations in market values can limit the Company's ability to effectively utilize all products purchased and can result in finished goods with above-market carrying costs which may cause losses on sales to customers. The Company's policy is to closely monitor inventory levels, obsolescence and lower market values compared to costs and, when necessary, reduce the carrying amount of its inventory to its net realizable value. As of September 30, 2024 December 31, 2024 and June 30, 2024, the inventory reserve was \$1,186,000 \$1,269,000 and \$1,106,000, respectively, and inventory on hand was comprised primarily of finished goods ready for sale.

Revenue Recognition: The Company follows Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) Topic 606, *Revenue from Contracts with Customers* (“ASC 606”).

Revenue is recognized when control of the promised goods is transferred at the point of shipment to a customer, and when performance conditions are satisfied at the customer location, in an amount that reflects the consideration that the Company expects to receive in exchange for those goods as per the agreement with the customer. The Company generates all its revenue from agreements with customers based on equipment shipment dates and when customer location work is completed. In case agreements with multiple performance obligations, the Company identifies each performance obligation and evaluates whether the performance obligations are distinct within the context of the agreement at the agreement’s inception. Performance obligations that are not distinct at agreement inception are combined. The Company allocates the transaction price to each distinct performance obligation proportionately based on the estimated standalone selling price for each performance obligation and then evaluates how the services are transferred to the customer to determine the timing of revenue recognition.

The Company considers the U.S. GAAP criteria for determining whether to report revenue gross as a principal versus net as an agent. Factors considered include whether the Company is the primary obligor, has risks and rewards of ownership, and bears the risk that a customer may not pay for the products provided or services performed. If there are circumstances where the above criteria are not met, revenues recognized are presented net of cost of goods sold.

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NOTE 1 — BUSINESS ACTIVITY AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

Contract assets consist of conditional or unconditional rights to consideration. Accounts receivable represent amounts billed to customers where the Company has an enforceable right to payment for performance completed to date (i.e., unconditional rights to consideration). The Company does not have contract assets that represent conditional rights to consideration.

Contract liabilities consist of customer refunds and warranty liabilities, as well as deposits received in advance on sales to certain customers. Such deposits are reflected as customer deposits and recognized in revenue when control of the products is transferred or when performance conditions are satisfied per the agreement. The change in contract liabilities (customer deposits and unearned warranty revenue) during the **three** **six** months ended **September 30, 2024** **December 31, 2024** included \$0.731 million for revenue recognized that was included in contract liability as of June 30 2024.

Contract Liabilities (\$ in Thousands)	September 30, 2024	June 30, 2024	December 31, June 30,
	2024	2024	2024 2024
Contract Liabilities			
Customer deposits	\$ 1,309	\$ 1,651	\$ 1,057 \$ 1,651
Unearned Revenue	54	31	65 31
Customer refunds	398	399	423 399
Total	\$ 1,761	\$ 2,081	\$ 1,545 \$ 2,081

Cost of goods sold includes cost of inventory sold during the period, net of vendor discounts and allowances, and shipping and handling costs, and sales taxes. Taxes collected from customers are included in accounts payable on a net basis (excluded from

revenues) until remitted to the government.

Deferred contract acquisition costs consist of sales commissions paid to the sales force, and the related employer payroll taxes, and are considered incremental and recoverable costs of obtaining a contract with a customer. The Company has determined that sales commissions paid are an immaterial component of obtaining a customer's contract and has elected to expense sales commissions when earned.

Disaggregation of Revenue (\$ in Thousands)	Three Months Ended		Three Months Ended		Six Months Ended	
	September 30,		December 31,		December 31,	
	2024	2023	2024	2023	2024	2023
Equipment upon delivery (point in time)	\$ 5,194	\$ 6,590	\$ 3,404	\$ 3,221	\$ 8,597	\$ 9,838
Installation (point in time)	44	27	23	27	67	27
Software and services (over time)	14	18	14	17	29	35
Total revenues	\$ 5,252	\$ 6,635	\$ 3,441	\$ 3,265	\$ 8,693	\$ 9,900

Revenue from the sale of equipment is recognized upon shipment of such equipment to customers and when performance conditions are satisfied at the custom location.

Revenue from installation labor is recognized upon completion of the installation project and when the performance obligation is complete.

Software subscription revenue for remote monitoring services is recognized on a straight-line basis over the term of the contract, usually one year. Services revenues are generally recognized over time as the contracts are performed.

Returns and Allowances: The Company records allowances for discounts and product returns at the time of sale as a reduction of revenue as such allowances can be reliably estimated based on historical experience and known trends.

Shipping and Handling Costs: Shipping and handling costs are included in cost of goods sold and are recognized as a period expense during the period in which they are incurred.

Advertising Costs: Advertising costs were approximately \$4,000 and \$3,400 for the three months ended September 30, 2024 and 2023. Advertising costs are expensed as incurred within selling and marketing expenses.

NOTE 1 — BUSINESS ACTIVITY AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

Advertising Costs: Advertising costs were approximately \$8,200 and \$6,200 for the three months ended December 31, 2024 and 2023, respectively and \$12,200 and \$9,600 for the six months ended December 31, 2024 and 2023, respectively. Advertising costs are expensed as incurred within selling and marketing expenses.

Intangible assets: Intangible assets arising from business combinations, such as customer relationships, trade names, and/or intellectual property, are initially recorded at fair value. The Company amortizes these intangible assets over the determined useful life

which generally ranges from 11 to 20 years. Management reviews its intangible assets for impairment whenever events or circumstances indicate that the carrying amount of an asset may not be fully recoverable. There were no intangible asset impairments recognized for the three or six months ended September 30, 2024 December 31, 2024 or 2023.

Business Combinations: The Company includes the results of operations of the businesses that it acquires commencing on the respective dates of acquisition. The Company allocates the fair value of the purchase price of its acquisitions to the assets acquired and liabilities assumed based on their estimated fair values. The excess of the fair value of the purchase price over the fair values of these identifiable assets and liabilities is recorded as goodwill.

Income Taxes: The Company utilizes an asset and liability approach for financial accounting and reporting for income taxes. The provision for income taxes is based upon income or loss after adjustment for those permanent items that are not considered in the determination of taxable income. Deferred income taxes represent the tax effects of differences between the financial reporting and tax basis of the Company's assets and liabilities at the enacted tax rates in effect for the years in which the differences are expected to reverse. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the period that includes the enactment date. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized.

The following table summarizes the components of deferred tax assets and deferred tax liabilities at September 30, 2024 December 31, 2024 and June 30, 2024 (in thousands):

\$ in Thousands	Deferred Tax Assets (Liabilities)		Deferred Tax Assets (Liabilities)	
	September 30, 2024	June 30, 2024	December 31, 2024	June 30, 2024
Inventory reserve	\$ 332	\$ 309	\$ 355	\$ 309
Accumulated depreciation	(6)	(6)	(4)	(6)
Accumulated goodwill amortization	61	63	61	63
Accumulated intangible amortization	124	125	128	125
Deferred rent	5	2	10	2
Warranty reserve	15	9	18	9
Stock compensation	68	68	68	68
Net operating loss carryforward	1,488	1,481	1,635	1,481
Allowance for doubtful accounts	109	106	36	106
Net	2,196	2,157	2,307	2,157
Valuation allowance	(2,196)	(2,157)	(2,307)	(2,157)
Total	\$ —	\$ —	\$ —	\$ —

Leases: On July 1, 2022 the Company adopted ASU 2016-02, Leases (Topic 842) which requires lessees to recognize assets and liabilities for the rights and obligations created by most leases on their balance sheet. In accordance with ASC 842, on July 1, 2024 the Company recognized Right of Use Assets in the amount of \$998,000 \$1,062,000 and a lease liability of \$998,000 \$1,062,000 for the leases associated with its executive office and warehouse space, as described in Note 8. 7.

Product Warranty: The Company's digital equipment products are sold under various limited warranty arrangements ranging from one year to three years. Company policy is to establish reserves for estimated product warranty costs in the period when the related revenue is recognized. The Company has the right to return defective products for up to three years, depending on the manufacturers' individual policies. As of September 30, 2024 December 31, 2024 and June 30, 2024, the Company has established a warranty reserve of \$56,000 \$39,000 and \$69,000, respectively, which is included in accrued expenses in the accompanying condensed consolidated balance sheets.

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NOTE 1 — BUSINESS ACTIVITY AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

The changes in the Company's aggregate warranty liabilities were as follows for the following periods (in thousands):

	September 30, 2024		June 30, 2024		December 31, 2024		June 30, 2024	
Produce warranty liability, beginning of period	\$	69	\$	53				
Product warranty liability, beginning of period					\$	69	\$	53
Accruals for warranties issued		252		250		259		250
Settlements made		(265)		(234)		(289)		(234)
Produce warranty liability, end of period	\$	56	\$	69				
Product warranty liability, end of period					\$	39	\$	69

Research and Development: The Company incurs costs to develop new products, as well as improve the appeal and functionality of its existing products. Research and development costs are charged to expense when incurred.

Recently Issued Accounting Pronouncements:

In November 2023, FASB issued ASU 2023-07 on segment disclosures. The amendments will be effective for fiscal years beginning after **December 15, 2023** **December 15, 2024** (fiscal 2025 for the Company) and interim periods within fiscal years beginning after December 15, 2024 (fiscal 2026 for the Company).

NOTE 2 — LOSS PER SHARE

Basic loss per share data for each period presented is computed using the weighted average number of shares of common stock outstanding during each such period. Diluted loss per share data is computed using the weighted average number of common and potentially dilutive securities outstanding during each period. Potentially dilutive securities consist of shares that would be issued upon the exercise of stock options and warrants, computed using the treasury stock method. A reconciliation of basic and diluted loss per share is as follows:

Loss per Share (In Thousands except for share and per share price)	For the Three Months Ended		For the Three Months		For the Six Months	
	September 30,		Ended December 31		Ended December 31	
	2024	2023	2024	2023	2024	2023
Numerator:						
Net (loss)/Income	\$ (25)	\$ 439				
Net (loss)			\$ (527)	\$ (794)	\$ (552)	\$ (355)
Denominator:						

Weighted average common shares outstanding, basic and diluted	9,896,850	10,685,778	9,896,850	10,655,686	9,896,850	10,670,732
Net (loss)/income per share						
Net (loss) per share						
Basic and diluted	\$ (0.00)	\$ 0.04	\$ (0.05)	\$ (0.07)	\$ (0.06)	\$ (0.03)

The following securities were excluded from the calculation of diluted loss per share in each period because their inclusion would have been anti-dilutive:

	For the Three Months Ended September 30		For the Six Months Ended December 31	
	2024	2023	2024	2023
Options	250,000	250,000	450,000	250,000
Total potentially dilutive shares	250,000	250,000	450,000	250,000

For the three and six months ended September 30, 2024 December 31, 2024 the Company had a net loss. However, all potentially dilutive securities were also deemed to be anti-dilutive because their exercise price exceeded the weighted average trading price of the Company's stock for the period.

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NOTE 3 — PROPERTY AND EQUIPMENT 3— INTANGIBLE ASSETS

Property and equipment consist The following table summarizes the Company's intangible assets as of the following December 31, 2024 (in thousands):

Property and Equipment (\$ in Thousands)	For the Three Months Ended September 30	For the Year Ended June 30
	2024	2024
Production equipment	\$ 307	\$ 307
Leasehold improvements	213	213
Furniture and fixtures	45	45
Computer equipment	73	73
Other equipment	120	120
Total	758	758
Accumulated depreciation	(734)	(730)
Net property and equipment	\$ 24	\$ 28

	Amortization	Gross Asset	Accumulated	Net Book
	Period	Cost	Amortization	Value
Customer relations	11 years	\$ 970	\$ 685	\$ 285
Patents	20 years	70	19	51
Trademark	20 years	78	21	57
		<u>\$ 1,118</u>	<u>\$ 725</u>	<u>\$ 393</u>

Depreciation The following table summarizes the Company's intangible assets as of June 30, 2024 (in thousands):

	Amortization	Gross Asset	Accumulated	Net Book
	Period	Cost	Amortization	Value
Customer relations	11 years	\$ 970	\$ 660	\$ 310
Patents	20 years	70	17	53
Trademark	20 years	78	19	59
		<u>\$ 1,118</u>	<u>\$ 696</u>	<u>\$ 422</u>

Amortization expense related to property was \$15,000 and equipment was \$4,000 and \$2,500 \$15,000 for the three months ended September 30, 2024 December 31, 2024 and 2023, respectively, of which \$0 and \$2,100 \$29,000 and \$29,000 for the six months ended December 31, 2024 and 2023, respectively, and is included in cost of goods and \$3,000 and \$400 in general and administrative expense, respectively.

NOTE 3 — PROPERTY AND EQUIPMENT (continued)

Depreciation of property and equipment is calculated using the straight-line method over their estimated useful lives as follows: expense.

	Useful Lives
Leasehold improvements	5 years or remaining lease term
Furniture and fixtures	5 years
Production equipment	3 – 7 years
Computer equipment	3 years
Other equipment	3 – 7 years

Estimated amortization expense related to intangible assets subject to amortization at December 31, 2024 in each of the years subsequent to December 31, 2024, and thereafter is as follows (amounts in thousands):

2025	\$ 30
2026	59
2027	59
2028	59
2029	59
Thereafter	<u>127</u>
Total	<u>\$ 393</u>

NOTE 4— ACCRUED EXPENSES

Accrued expenses consist of the following (in thousands):

Accrued Expenses (\$ in Thousands)	December 31, 2024	June 30, 2024
Employee compensation	\$ 304	\$ 178
Accrued warranty	39	69
Freight	9	32
Sales tax	9	14
Other	45	27
Total	\$ 406	\$ 320

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NOTE 4— INTANGIBLE ASSETS

The following table summarizes the Company's intangible assets as of September 30, 2024 (in thousands):

STOCKHOLDERS' EQUITY

	Amortization Period	Gross Asset Cost	Accumulated Amortization	Net Book Value
Customer relations	11 years	\$ 970	\$ 672	\$ 297
Patents	20 years	70	18	52
Trademark	20 years	78	20	58
		\$ 1,118	\$ 710	\$ 407

The following table summarizes the Company's intangible assets as of June 30, 2024 (in thousands):

	Amortization Period	Gross Asset Cost	Accumulated Amortization	Net Book Value
Customer relations	11 years	\$ 970	\$ 660	\$ 310
Patents	20 years	70	17	53
Trademark	20 years	78	19	59
		\$ 1,118	\$ 696	\$ 422

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NOTE 4— INTANGIBLE ASSETS (continued)

Amortization expense was \$15,000 and \$14,000 for the three months ended September 30, 2024 and 2023, respectively, and is included in general and administrative expense.

Estimated amortization expense related to intangible assets subject to amortization at September 30, 2024 in each of the years subsequent to September 30, 2024, and thereafter is as follows (amounts in thousands):

2025	\$	44
2026		59
2027		59
2028		59
2029		59
Thereafter		127
Total	\$	407

NOTE 5 — ACCRUED EXPENSES

Accrued expenses consist of the following (in thousands):

Accrued Expenses (\$ in Thousands)	September 30, 2024	June 30, 2024
Employee compensation	\$ 236	\$ 178
Accrued warranty	56	69
Freight	23	32
Sales tax	3	14
Other	29	27
Total	\$ 347	\$ 320

NOTE 6 — STOCKHOLDERS' EQUITY

In 2019, the Company adopted the 2019 Omnibus Incentive Plan (the "Plan"). The Plan, as amended, provides for the issuance of stock-based awards to employees. As of September 30, 2024 December 31, 2024, the Plan provides for the issuance of up to 1,500,000 stock-based awards. There are 1,220,000 1,020,000 stock-based awards available to grant under the Plan at September 30, 2024 December 31, 2024.

In July 2021, MiT Inc. entered into an Exchange Agreement with MiT LLC pursuant to which MiT Inc. agreed to exchange membership units for 2,350,000 shares of Common Stock representing 41.4% of the equity as of such date on a fully diluted basis for no consideration. The shares were exchanged as part of the Exchange Agreement with the Company.

The Company recognized \$5,000 and \$5,000 in compensation expense for stock options during the three months ended September 30, 2024 and September 30, 2023, respectively.

On March 6, 2023, the Board of Directors (the "Board") of Moving iMage Technologies, Inc. (the "Company") approved an amendment (the "Amendment") to the Company's Amended and Restated Bylaws that amends the quorum for a stockholders' meeting or action to be at least 33 1/3% of all shares of stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy.

For On October 30, 2024, and as part of Francis Godfrey's appointment as the Company's President and Chief Operating Officer, the Board granted Francis Godfrey 200,000 options with an exercise price of \$0.65 with 25% vesting immediately and the remainder vesting at 25% per year thereafter. In December 2024, the Board of Directors granted Phil Rafnson, CEO, a \$100,000 bonus in recognition of his prior salary concessions made and for his efforts in the revised Company budget and his leadership in securing Francois Godfrey as President.

The Company recognized compensation expense of approximately \$32,000 and \$5,000 for stock options during the three month period months ended September 30, 2024 December 31, 2024 and December 31, 2023, there respectively, and \$37,000 and \$10,000 during the six months ended December 31, 2024 and December 31, 2023, respectively. None of these potentially dilutive securities were included in the computation of diluted earnings per share as their impact would be anti-dilutive.

The estimated fair value of each option award granted was no unrecognized compensation cost related to nonvested stock determined on the date of grant using the Black-Scholes option awards valuation model. 200,000 were granted during the three and six months ended December 31, 2024. There were no option granted grants during the three and six months ended December 31, 2023.

**December 31,
2024
Officer
Options**

Risk-free interest rate	4.22 %
Expected volatility	84 %
Dividend yield	— %
Expected option term in years	5.5

A summary of the status of the Company's stock options as of December 31, 2024 and changes during the six months ended December 31, 2024 are presented below.

	Options	Wtd. Avg. Exercise Price
Balance, July 1, 2024	250,000	\$ 1.10
Granted during the period	200,000	0.65
Exercised during the period	—	—
Cancelled during the period	—	—
Balance, December 31, 2024	<u>450,000</u>	<u>\$ 0.90</u>

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NOTE 65 — STOCKHOLDERS' EQUITY (continued)

The estimated fair value of each option award granted was determined on the date of grant using the Black-Scholes option valuation model. No options were granted during the three and nine months ended September 30, 2024. The following weighted average assumptions were used for option grants during the three months ended September 30, 2023:

	<u>Director Options</u>	<u>Officer Options</u>
Risk-free interest rate	3.92 %	3.86 %
Expected volatility	82.0 %	82.0 %
Dividend yield	— %	— %
Expected option term in years	5	7

As authorized by the Board on May 26, 2023, directors may receive their board fees as cash or in shares of the Company's stock. The Company records director fee expense at the end of each board meeting. On March 25, 2024, the Company subsequently issued 18,938 shares to its independent directors for director fees earned during the nine months ended September 30, 2024.

A summary of the status of the Company's stock options as of September 30, 2024 and changes during the three months ended September 30, 2024 are presented below.

	<u>Options</u>	<u>Wtd. Avg. Exercise Price</u>
Balance, July 1, 2024	250,000	\$ 1.10
Granted during the period	—	—
Exercised during the period	—	—
Cancelled during the period	—	—
Balance, September 30, 2024	<u>250,000</u>	<u>\$ 1.10</u>

A summary of the status of the Company's stock options as of September 30, 2023 December 31, 2023 and changes during the three six months ended September 30, 2023 December 31, 2023 are presented below.

	<u>Options</u>	<u>Wtd. Avg. Exercise Price</u>	<u>Options</u>	<u>Wtd. Avg. Exercise Price</u>
Balance, July 1, 2022	—	\$ —		
Balance, July 1, 2023			250,000	\$ 1.10
Granted during the period	250,000	1.10	—	—
Exercised during the period	—	—	—	—
Terminated/Expired during the period	—	—	—	—
Balance, September 30, 2023	<u>250,000</u>	<u>\$ 1.10</u>		

Balance, December 31, 2023	250,000	\$ 1.10
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The following table summarizes information about outstanding and exercisable stock options at September 30, 2024 December 31, 2024:

Range of Exercise Price	Number		Wtd. Avg.		Number		Wtd. Avg.	
	Outstanding	Exercisable	Wtd. Avg, Life	Exercise Price	Outstanding	Exercisable	Wtd. Avg, Life	Exercise Price
\$1.10	250,000	200,000	8.0 years	\$1.10				
\$0.65 - \$1.10					450,000	275,000	9.33 years	\$0.90

There was no warrant activity or warrants outstanding during the year ended June 30, 2024 or for the three six months ended September 30, 2024 December 31, 2024 and 2023.

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NOTE 76 — CUSTOMER AND VENDOR CONCENTRATIONS

Customers: Three Two customers accounted for 17%, 13% 15% and 11% 12%, respectively, of the Company's sales for the three months ended September 30, 2024 December 31, 2024. Two customers accounted for 13% and 11%, respectively, of the Company's sales for the six months ended December 31, 2024.

At September 30, 2024 December 31, 2024, the amount of outstanding receivables related to the three two customers was approximately \$135,000 \$287,000.

Two customers accounted for 15% and 14% 10% of the Company's sales for the three months ended September 30, 2023 December 31, 2023.

Vendors: Approximately 26% 18% of the Company's purchases were provided by one vendor for the three months ended September 30, 2024 December 31, 2024. Approximately 23% and 20% 11% of the Company's purchases were provided by two vendors one vendor for the three months ended September 30, 2023 December 31, 2023.

One vendor accounted for 17% of the Company's sales for the six months ended December 31, 2024. Approximately 19% and 17% of the Company's purchases were provided by 2 vendors for the six months ended December 31, 2023

NOTE 87 — LEASE COMMITMENTS AND CONTINGENCIES

Operating Leases: The Company leases executive office and warehouse space in Fountain Valley, CA, pursuant to separate lease agreements. Under ASC 842, at contract inception the Company determined whether the contract is or contains a lease and whether the lease should be classified as on an operating or a financing lease. Operating leases are included in ROU (right-of-use) assets and operating lease liabilities in our condensed consolidated balance sheets.

The Company's executive office and warehouse lease agreements are classified as operating leases.

The lease agreements, as amended, expire on January 31, 2025 and do not include any renewal options. The agreements provide for initial monthly base amounts plus annual escalations through the term of the leases. On July 23, 2024, the Company renewed its Fountain Valley location effective February 1, 2025 by an additional five years with a January 31, 2030 lease expiration date. Both parties agreed that July 23, 2024 was the effective modification date. The monthly rent payable for the first year of the extended term will be \$19,362 and increases by 4% on each anniversary date. On June 4, 2024, the Company notified its Grace facility location landlord of its intent to vacate at the end of the current January 31, 2025 lease term.

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NOTE 7 — LEASE COMMITMENTS AND CONTINGENCIES (continued)

On October 30, 2024, the Company entered into a new 4,344 square foot facility lease with a three-year lease term and a February 1, 2028 lease expiration date. The monthly rent payable for the first year of the extended term will be \$6,299 and increases by 4% on each anniversary date.

In addition to the monthly base amounts in the lease agreements, the Company is required to pay a portion of real estate taxes and common operating expenses during the lease terms.

The Company's operating lease expense was \$86,000 \$99,000 and \$73,000 for the three months ended September 30, 2024 December 31, 2024 and 2023, respectively. The Company's operating lease expense was \$185,000 and \$147,000 for the six months ended December 31, 2024 and 2023, respectively.

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NOTE 8 — LEASE COMMITMENTS AND CONTINGENCIES (continued)

Future minimum lease payments at September 30, 2024 December 31, 2024 under these arrangements are as follows:

	(in thousands) Total Payments	(in thousands) Total Payments
Operating leases		
2025	\$ 195	\$ 147
2026	236	313
2027	246	326

2028	255	303
2029	266	266
2030	159	159
Total undiscounted operating lease payments	\$ 1,357	\$ 1,514
Less imputed interest (at 8.5%)	(265)	(271)
Present value of operating lease payments	\$ 1,092	\$ 1,243

The following table sets forth the ROU assets and operating lease liabilities as of September 30, 2024 December 31, 2024:

Assets	(in thousands)	(in thousands)
ROU assets-net	\$ 1,074	\$ 1,206
Liabilities		
Current operating lease liabilities	\$ 170	\$ 206
Long-term operating lease liabilities	922	1,037
Total ROU liabilities	\$ 1,092	\$ 1,243

The Company's weighted average remaining lease term for its operating leases is 5.24.9 years using a weighted average discount rate of 8.5%.

Legal Matters: From time to time, the Company is involved in routine litigation that arises in the ordinary course of business. There are no pending significant legal proceedings to which the Company is a party for which management believes the ultimate outcome would have a material adverse effect on the Company's financial position.

NOTE 98 — SUBSEQUENT EVENTS

On October 30, 2024, the Board of Directors of Moving iMage Technologies, Inc. the Company appointed Francois Godfrey to serve as the Company's President, Chief Operating Officer and Board Member, effective October 30, 2024. Mr. Godfrey replaces Phil Rafnson as President with Mr. Rafnson remaining as the Company's Chief Executive Office and Chairman of the Board.

On October 30, 2024, Bevan Wright, Executive Vice President, resigned from the Board of Directors and will serve as an advisory board member, effective October 30, 2024, 2024. Mr. Wright's decision to resign from the Board was not due to any disagreement with the Company on any matter relating to the Company's operations, policies or practices.

In connection with Mr. Godfrey's appointment, on October 30, 2024, the Company and Mr. Godfrey entered into an arrangement pursuant to which Mr. Godfrey will be paid an annual salary of \$225,000.

On October 30, 2024, the Company entered into a new 4,344 square foot facility lease with a three-year lease term and a February 1, 2028.lease expiration date. The monthly rent payable for the first year of the extended term will be \$6,299 and increases by 4% on each anniversary date.

NOTE 9 — SUBSEQUENT EVENTS (continued)

Management has evaluated events from September 30, 2024 December 31, 2024 through November 14, 2024 February 13, 2025, the date these financial statements were available to be issued and determined that there have been no other events that occurred that would require adjustment to our disclosures in the condensed consolidated financial statements.

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ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Forward-Looking Statements

Certain matters in this Quarterly Report on Form 10-Q (this "Report"), including (without limitation) statements under "Management's Discussion and Analysis of Financial Condition and Results of Operations", contain forward-looking statements. Although we believe that, in making any such statements, our expectations are based on reasonable assumptions, any such statement may be influenced by factors that could cause actual outcomes and results to be materially different from those projected.

Forward-looking statements include information concerning our possible or assumed future results of operations and expenses, business strategies and plans, competitive position, business environment, and potential growth opportunities. Forward-looking statements include all statements that are not historical facts. In some cases, forward-looking statements can be identified by terms such as "anticipates," "believes," "could," "estimates," "expects," "intends," "may," "plans," "potential," "predicts," "projects," "seeks," "should," "will," "would," or similar expressions and the negatives of those terms.

Forward-looking statements involve known and unknown risks, uncertainties, and other factors that may cause our actual results, performance, or achievements to be materially different from any future results, performance, or achievements expressed or implied by the forward-looking statements. Although we believe that the expectations reflected in these forward-looking statements are reasonable, these expectations may not prove to be correct, or we may not achieve the financial results, savings or other benefits anticipated in the forward-looking statements. These forward-looking statements are necessarily estimates reflecting the best judgment of our senior management and involve a number of risks and uncertainties, some of which may be beyond our control. These risks and uncertainties, including those disclosed under "Risk Factors" in Part I, Item 1A of our Annual Report on Form 10-K for the fiscal year ended June 30, 2023 June 30, 2024, filed with the Securities and Exchange Commission (the "SEC") on September 27, 2023 September 27, 2024, and in our other filings with the SEC, could cause actual results to differ materially from those suggested by the forward-looking statements and include, without limitation:

- The condition of the economy in general and of the cinema and/or cinema equipment industry in particular,
- Our customers' adjustments in their order levels,
- Seasonality in our business, specifically our second fiscal quarter which is traditionally weaker,
- Changes in our pricing policies or the pricing policies of our competitors or suppliers,
- The addition or termination of key supplier relationships,
- The rate of introduction and acceptance by our customers of new products and services,

- Our ability to compete effectively with our current and future competitors,
- Our ability to enter into and renew key relationships with our customers and vendors,
- Changes in foreign currency exchange rates,
- A major disruption of our information technology infrastructure,
- Unforeseen catastrophic events such as the COVID-19 pandemic, armed conflict, terrorism, fires, typhoons and earthquakes,
- A lack of entertainment content caused by entertainment content provider labor disputes, strikes and work shutdowns, and

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Any other disruptions, such as labor shortages, unplanned maintenance or other manufacturing problems.

Given these uncertainties, you should not place undue reliance on any forward-looking statements in this Report. Also, forward-looking statements represent our beliefs and assumptions only as of the date of this Report. You should read this Report and the documents that we have filed as exhibits, completely and with the understanding that our actual future results may be materially different from what we expect.

Any forward-looking statement made by us in this Report speaks only as of the date on which it is made. Except as required by law, we disclaim any obligation to update these forward-looking statements publicly, or to update the reasons actual results could differ materially from those anticipated in these forward-looking statements, even if new information becomes available in the future. All forward-looking statements are expressly qualified in their entirety by the foregoing cautionary statements.

The following discussion and analysis should be read in conjunction with the accompanying condensed consolidated financial statements and related notes included elsewhere in this Report.

Overview

We are a leading provider of technology, products, and services to movie theater operators and sports and entertainment venues.

- 1) We provide a set of valuable services to movie theater operators and other critical screening and viewing rooms. These services include overall project management, which can encompass a wide range of design, integration, installation, and procurement services for new auditorium builds, refurbishments, or upgrades to existing facilities.
- 2) We design and manufacture a set of proprietary products that are sold either as part of our project management services or a la carte. Examples of these products include our ADA-compliant accessibility products and our Caddy brand, a leading provider of proprietary cup holders, trays, and other products sold into our strategic markets of motion picture exhibition, entertainment, and sports venues as well as other non-strategic markets. We also resell third-party technologies, including but not limited to items such as screens, projectors, and servers.
- 3) We resell third-party products as part of our project management services or a la carte. These include technology products such as screens, projectors, servers, and FF&E (furniture, fixtures, and equipment).

- 4) Finally, we have a set of recently introduced products that we believe have the potential to be disruptive to the movie theater, entertainment and sports venue industries. For example, our operations enhancement and theater management solution include a software-as-a-service (SaaS) platform combined with other technologies that allow theater operators to improve their quality control. We have also developed a translator product and service that will enable moviegoers to watch a movie in any language that the film is available in, all in the same auditorium through a set of augmented reality glasses. Another example is a proprietary mobile cart we've developed to enable eSports and gaming in movie-theater auditoriums.

Factors affecting our performance

Effect of COVID-19 global pandemic. The COVID-19 pandemic has had an unprecedented impact on the world and the movie exhibition industry. The social and economic effects have been widespread. At various points during the pandemic, authorities around the world imposed measures intended to control the spread of COVID-19, including stay-at-home orders and restrictions on large public gatherings, which caused movie theaters in countries around the world to temporarily close. The repercussions of the COVID-19 global pandemic resulted in a significant impact on our customers, specifically those in the entertainment and cinema industries. As a result, the Company implemented various cash preservation strategies, including, but not limited to, temporary personnel and salary reductions, halting non-essential operating and capital expenditures, and negotiating modified timing and/or abatement of contractual payments with landlords and other major suppliers.

Throughout 2020 and 2021 the theatres reopened as soon as local restrictions and the status of the COVID-19 pandemic would allow. As of **September 30, 2024** **December 31, 2024**, a large majority of domestic and international theatres were open. The industry's recovery to historical levels of new film content, both in terms of the number of new films and box office performance, is still underway, as the

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industry recovers from the 2023 SAG-AFTRA strike, evolving theatrical release windows, competition from streaming and other delivery platforms, supply chain delays, inflationary pressures, labor shortages, wage rate pressures and other economic factors.

Based on our current estimates of recovery, we believe we have, and will generate, sufficient cash to sustain operations. **Nonetheless, the COVID-19 pandemic and SAG-AFTRA strike has had, and continues to have, adverse effects on the Company's business, results of operations, cash flows and financial condition.**

Investment in growth. Based on **2024** **June 30, 2024** losses, we will selectively invest in expanding our operations. We expect our total operating expenses to decrease in the foreseeable future to meet our revenue and cost control objectives. We plan to invest in our sales and support operations to support our new product initiatives and budget goals.

Adding New Customers and Expanding Sales to Our Existing Customer Base. We intend to target new customers by selectively investing in our field sales force. We also intend to continue to target large customers' organizations who have yet to use our products and services. A typical initial order involves educating prospective customers about the technical merits and capabilities and potential cost savings of our products and services as compared to our competitors' products. We believe that customer references

have been, and will continue to be, an important factor in winning new business. We expect that a substantial portion of our future sales will be sales to existing customers, including expansion of their product and service offerings, as we offer new products and

services through the existing sales channel. Our business and results of operations will depend on our ability to continue to add new customers and sell additional products and services to our growing base of customers.

Promoting Our Brand and Offering Additional Products. Our future performance will depend on our continued ability to achieve brand recognition for our proprietary line of products. We plan to increase our marketing expenditures to continue to create and maintain prominent brand awareness. Also, our future performance will depend on our ability to continue to offer high quality, high performance and high functionality products and services. We intend to continue to devote efforts to introduce new products and services including new versions of our existing product lines. We expect that our results of operations will be impacted by the timing, size and level of success of these brand awareness and product and service offering efforts.

Ability to Maintain Gross Margins. Our gross margins have been and are expected to continue to be affected by a variety of factors, including competition, the timing of changes in pricing, shipment volumes, new product introductions, changes in product mixes, changes in our purchase price of components and assembly and test service costs and inventory write downs, if any. Our goal is to strive to maintain gross profits for products that may have a declining average selling price by continuing to focus on increased sales volume and looking to reduce operating costs. Decreases in average selling prices are primarily driven by competition and by reduced demand for products that face potential or actual technological obsolescence. We also focus on managing our inventory to reduce our overall exposure to price erosion. In addition, we seek to introduce new products and services with higher gross margins to offset the potential effect of price erosion on other lines of products. For example, we have recently productized and began marketing a new system which combines full compliance with the Americans with Disabilities Act with a multi-language capability we expect this system will have higher margins than a substantial number of existing products we offer. In addition, we expect our offerings of Direct View LED screens to also carry significantly higher margins.

Fluctuations in Revenues and Earnings. Both the sales cycle and the contract fulfillment cycle are dependent on a number of factors from our customers that are not in our control. Accordingly, backlog, the conversion of backlog into revenue and related earnings may fluctuate from quarter to quarter depending on our customers' particular requirements, which can sometimes change between the initial signing of a contract and its ultimate fulfillment.

Cost of goods sold

Cost of goods sold includes the cost of products or components that we purchase from third party manufacturers plus assembly and packaging labor costs for these third parties or in-house designed products. Cost of goods sold is also affected by inventory obsolescence if our inventory management is not effective or efficient. We mitigate the risk of inventory obsolescence by stocking relatively small amounts of inventory at any given time, except for periodic strategic purchases, and relying rely instead on a strategy of manufacturing or acquiring products based on orders placed by our customers.

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General and administrative expenses

General and administrative expenses relate primarily to compensation and associated expenses for personnel in general management, information technology, human resources, procurement, planning and finance, as well as outside legal, investor relations, accounting, consulting and other operating expenses.

Selling and marketing expenses

Selling and marketing expenses relate primarily to salary and other compensation and associated expenses for internal sales and customer relations personnel, advertising, outbound shipping and freight costs, tradeshow, royalties under a brand license, and selling commissions.

Research and development expenses

Research and development expenses consist of compensation and associated costs of employees engaged in research and development projects, as well as materials and equipment used for these projects, and third-party compensation for research and development services. We do not engage in any long-term research and development contracts, and all research and development costs are expensed as incurred.

Results of Operations

Three months ended **September 30, 2024** **December 31, 2024** compared to the three months ended **September 30, 2023** **December 31, 2023**

Sales

Three Months Ended September 30,				
				Three Months Ended December 31,
(in 000's)				
2024			2024	2023
			2024	2023
\$			5,252	\$6,635

Research and Development

Three Months Ended September 30,						Three Months Ended December 31,			
Three Months Ended December 31,									
(in 000's)									
2024						2024	2023	2024	2023
\$						61	\$ 67	47	\$ 72

Research and development expenses decreased by \$(0.006) \$(0.025) million or 9% 35% for the three months ended September 30, 2024 December 31, 2024 compared to the three months ended September 30, 2023 December 31, 2023 due to lower compensation expense. headcount reduction.

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Selling, General and Administrative Expense

Three Months Ended September 30,					
				Three Months Ended December 31,	
Three Months Ended December 31,					
(in 000's)					
2024		2024	2023	2024	2023
\$		1,379	\$1,368	1,450	\$1,517

The increase decrease in selling, general and administrative expense of \$0.011 million \$0.067 million or 0.8% 4.4% was due primarily fewer payroll hours allocated to cost of goods sold offset by headcount reduction and lower headcount compensation expense in the three months ended September 30, 2024 December 31, 2024 compared to the three months ended September 30, 2023 December 31, 2023.

Other Income (Expense)

Three Months Ended September 30,			
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Three Months Ended December 31,				Three Months Ended December 31,
(in 000's)				
2024				2024 2023 2024 2023
\$				43 \$ 55 34 \$ 36

Other Income(Expense) was \$0.043 million \$0.034 million for the three months ended September 30, 2024 December 31, 2024 compared to Other Income(Expense) of \$0.055 million \$0.036 million for the three months ended September 30, 2023 December 31, 2023 or a decline \$(0.012) of \$(0.002) million. The decline was primarily due to a lower cash balance and the related lower interest income on cash savings accounts in the three months ended September 30, 2023 December 31, 2023 compared to the higher cash balance and the related higher interest income in the three months ended September 30, 2024 December 31, 2024.

Net (Loss)/Income

Three Months Ended September 30,				Three Months Ended December 31,
(in 000's)				
2024				2024 2023 2024 2023
\$				(25) \$439 (527) \$(794)

Net loss was \$(0.025) \$(0.527) million for the three months ended September 30, 2024 December 31, 2024 compared to a net income loss of \$0.439 million \$(0.794) million for the three months ended September 30, 2023 December 31, 2023 or a decline \$(0.464) million, loss reduction of \$0.267 million. The decrease loss reduction was due to the higher gross margin of \$0.177 million and lower operating expenses of \$0.092 million offset by lower other income of \$(0.002) million.

Six months ended December 31, 2024 compared to the six months ended December 31, 2023

Sales

Six Months Ended December 31,			
(in 000's)			
2024		2023	
\$ 8,693		\$ 9,900	

Net sales decreased 12.2% to \$8.693 million for the six months ended December 31, 2024 from \$9.900 million for the six months ended December 31, 2023 due to higher one-time sales in the six months ended December 31, 2023.

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Gross Profit

Six Months Ended December 31,			
(in 000's),			
2024		2023	
\$	2,307	\$	2,578

Along with the 12.2% revenue decrease, gross profit decreased 10.5% to \$2.307 million for the six months ended December 31, 2024 from \$2.578 million for the six months ended December 31, 2023 or a decrease of \$(0.271) million. As a percentage of total revenues, gross profit percentage increased to 26.5% from 26.0% due to higher margin revenues.

Research and Development

Six Months Ended December 31,			
(in 000's)			
2024		2023	
\$	109	\$	139

Research and development expenses decreased by \$(0.030) million or 21.6% for the six months ended December 31, 2024 compared to the six months ended December 31, 2023 due to headcount reduction.

Selling, General and Administrative Expense

Six Months Ended December 31,			
(in 000's)			
2024		2023	
\$	2,827	\$	2,886

The decrease in selling, general and administrative expense of \$0.059 million or 2.0% due to headcount reduction and lower compensation expense in the six months ended December 31, 2024 compared to the six months ended December 31, 2023.

Other Income (Expense)

Six Months Ended December 31,			
(in 000's)			
2024		2023	
\$	77	\$	92

Other Income(Expense) was \$0.077 million for the six months ended December 31, 2024 compared to Other Income(Expense) of \$0.092 million for the six months ended December 31, 2023 or a decline of \$(0.015) million. The decline was due to a lower interest income on cash savings accounts in the six months ended December 31, 2023 compared to the six months ended December 31, 2024.

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Net (Loss)

Six Months Ended December 31,			
(in 000's)			
2024		2023	
\$	(552)	\$	(355)

Net loss was \$(0.552) million for the six months ended December 31, 2024 compared to a net loss of \$(0.355) million for the six months ended December 31, 2023 or a loss increase of \$(0.197) million. The loss reduction was due to a lower gross margin of \$(0.447) \$(0.271) million offset by higher and lower operating expenses of \$0.005 million and \$0.089 million offset by lower other income of \$(0.012) \$(0.015) million.

Liquidity and Capital Resources

During the past several years, we have primarily met our working capital and capital resource needs from our operating cash flows and financing activities. We believe that our existing sources of liquidity, including cash and operating cash flow, will be sufficient to fund our operations and to meet our projected capital needs for a period of at least 12 months from the date the condensed consolidated financial statements are available to be issued. On July 7, 2021, the Company completed an initial public offering resulting in net proceeds of approximately \$12.360 million. Cash The cash balance at September 30, 2024 December 31, 2024 was approximately \$5.246 million \$5.316 million, as compared to \$5.278 million at June 30, 2024.

On August 8, 2024, the Board of Directors authorized salary reductions of \$100,000 for the CEO from \$250,000 to \$150,000 and salary reductions for the Executive VP, Operations, Executive VP, Sales and Marketing from \$234,000 to \$212,000, respectively and the CFO from \$220,000 to \$200,000.

Cash Flows from Operating Activities

Compared to September 30, 2023 December 31, 2023, net cash used provided by operating activities increased by \$0.175 million \$1.402 million in September 30, 2024 December 31, 2024 due to cost reductions and lower inventory levels. Net cash used provided by operating activities was \$(0.032) million \$0.038 million for the three six months ended September 30, 2024 December 31, 2024, primarily due to \$(0.180) 0.202 million in working capital increases along with \$(0.552) million in net losses and 0.388 million in other non-cash expenses. Within the working capital change, net cash provided included \$1.518M in accounts receivable, inventory,

prepaids, accrued expense, unearned warranty revenue offset by \$(1.316) million in payables, customer deposit declines and lease liabilities. Net cash used in operating activities was \$(1.364) million for the six months ended December 31, 2023, primarily due to \$(1.190) million in working capital decreases along with \$(0.025) \$(0.355) million in net losses

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and offset by \$0.173 million \$0.181 million in other non-cash expenses. Within working capital change, the uses of cash used of \$(0.818) \$(1.268) million included declines changes in payables, customer deposits and lease liabilities offset by \$0.638M in provision for receivables, inventory, prepaids, accrued expense payables and unearned warranty revenue. Net cash used in operating activities customer deposits. Cash provided by working capital of \$0.078 million was \$(0.207) million for the three months ended September 30, 2023, primarily due to \$(0.735) million the changes in working capital declines offset by the \$0.439 million in net income accrued expenses and \$0.090 million in other non-cash expenses. The net change in other working capital was primarily due to increases in receivables, inventory and payables and decreases in customer deposits, offset by decreases in prepaid and accrued expenses. lease liabilities.

Cash Flows from Investing Activities

Net cash used in investing activities was zero for the three six months ended September 30, 2024 December 31, 2024. Net cash used in investing activities was \$(0.001) \$(0.012) million for the three six months ended September 30, 2023 December 31, 2023, for equipment purchases.

Cash Flows from Financing Activities

Net cash used in financing activities was zero for the three six months ended September 30, 2024 December 31, 2024 and the three six months ended September 30, 2023 December 31, 2023.

Critical Accounting Policies and Estimates

Our management's discussion and analysis of our financial condition and results of operations is based on our unaudited consolidated financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles ("US GAAP").

For a discussion of the critical accounting policies and estimates, refer to the "Critical Accounting Policies and Estimates" section in Part II, Item 7 of our 2024 Form 10-K. There have been no material changes during the three six months ended September 30, 2024 December 31, 2024 to the judgments, assumptions and estimates upon which our critical accounting estimates are based.

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Additionally, refer to Note 1 of our notes to our unaudited consolidated financial statements included in this Form 10-Q for additional discussion of our summary of significant accounting policies and use of estimates.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not applicable.

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ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures designed to ensure that the information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified under the rules and forms of the SEC. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that such information is accumulated and communicated to our management, including our Chief Executive Officer and our Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosures. As required by paragraph (b) of Rules 13a-15 and 15d-15 under the Exchange Act, our Chief Executive Officer (our principal executive) and Chief Financial Officer (our principal financial officer and principal accounting officer) carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures as of **September 30, 2024** **December 31, 2024**. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures (as defined in paragraph (e) of Rules 13a-15 and 15d-15 under the Exchange Act) were not effective at **September 30, 2024** **December 31, 2024** due to material weaknesses in our internal **control** **controls** over financial reporting as described below.

Prior to the completion of our IPO in July 2021, we had been a private company with limited accounting personnel and other resources to address our internal control over financial reporting. During the course of preparing our consolidated financial statements for the years ended June 30, 2024, 2023 and 2022, we determined that we had material weaknesses in our internal control over financial reporting relating to our financial reporting processes relating to (i) the design and operation of our closing and financial reporting process, (ii) the fact that we had no formal or documented accounting policies or procedures, (iii) the fact that certain segregation of duties issues existed and (iv) the fact that there was no formal review process around journal entries recorded. To improve internal controls, and starting with the three months ended **September 30, 2024** **March 31, 2023** and continuing since, Management updates month end close checklists, has implemented more segregation of duties among its limited accounting staff and the CFO formally approves month end journal entries.

Changes in Internal Control over Financial Reporting

During the quarter ended **September 30, 2024** **December 31, 2024**, there have been no changes in our internal controls over financial reporting, as such term is defined in Rules 13a-15(f) and 15(d)-15(f) promulgated under the Exchange Act, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II – OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

We are not party to any material pending legal proceedings. From time to time, we may be subject to legal proceedings and claims arising in the ordinary course of business.

ITEM 1A. RISK FACTORS

There have been no material changes to the risk factors reported in Item 1A in the Company's Annual Report on Form 10-K for the fiscal year ended June 30, 2024.

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ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Unregistered Sales of Equity Securities

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

Not applicable.

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ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

Not applicable.

ITEM 6. EXHIBITS

<u>Exhibit No.</u>	<u>Exhibit Description</u>
3.1	Amended and Restated Bylaws of Moving iImage Technologies, Inc. (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on January 9, 2024).
31.1*	Certification of the Principal Executive Officer pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934.
31.2*	Certification of the Principal Financial Officer pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934.
32.1†	Certification of the Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS*	The following financial statements from the Company's Quarterly Report on Form 10-Q for the quarter ended December 31, 2021, formatted in Inline XBRL: (i) Condensed Consolidated Statements of Cash Flows, (ii) Condensed Consolidated Statements of Operations, (iii) Condensed Consolidated Balance Sheets, and (iv) Notes to Condensed Consolidated Financial Statements, tagged as blocks of text and including detailed tags.
104*	Cover Page Interactive Data File (Embedded within the Inline XBRL document and included in Exhibit 101).

* Filed herewith.

^a Indicates a management contract or compensatory plan or arrangement.

† Furnished herewith and not "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

MOVING IMAGE TECHNOLOGIES, INC.

Date: November 14, 2024 February 13, 2025

By: /s/ William F. Greene

Name: William F. Greene

Title: Chief Financial Officer

(Principal Financial and Accounting Officer)

Exhibit 3.1

**AMENDED AND RESTATED
BYLAWS
OF
MOVING IMAGE TECHNOLOGIES, INC.
(a Delaware corporation)**

As of January 8, 2024

**ARTICLE I
OFFICES**

Section 1. Registered Office. The registered office of the Corporation shall be as set forth in its certificate of incorporation.

Section 2. Other Offices. The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

**ARTICLE II
MEETINGS OF STOCKHOLDERS**

Section 1. Place of Meetings. All meetings of the stockholders for the election of directors shall be held at such place, if any, as may be fixed from time to time by the Board of Directors, or at such other place either within or without the State of Delaware as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting. Meetings of stockholders for any other purpose may be held at such time and place, if any, within or without the State of Delaware, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof. The Board of Directors may, in its sole discretion, determine that the meeting may be held solely by means of remote communication as authorized by and pursuant to Delaware General Corporation Law ("DGCL").

If authorized by the Board of Directors, in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication (a) participate in a meeting of stockholders and (b) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication; provided that, the Corporation shall implement reasonable measures to (i) verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder; (ii) provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and (iii) if any stockholder or

proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

Section 2. Annual Meetings. Annual meetings of stockholders shall be held on such date and time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting. At each annual meeting, the stockholders shall (i) elect directors to succeed those directors whose terms expire in that year, and (ii) transact such other business as may properly be brought before the meeting.

All elections of directors shall be by written ballot unless otherwise provided in the certificate of incorporation; if authorized by the board of directors, such requirement of a written ballot shall be satisfied by a ballot submitted by electronic transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or proxy holder.

Section 3. Notice of Annual Meeting. Notice of an annual meeting stating the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting (as authorized by the Board of Directors in its sole discretion pursuant to Section 211(a)(2) of the DGCL), and the purpose or purposes for which the meeting is called, shall be given not fewer than ten (10) nor more than sixty (60) days before the date of the meeting, to each stockholder entitled to vote at such

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meeting as of the record date for determining the stockholders entitled to notice of the meeting, unless otherwise provided by statute, the certificate of incorporation or these bylaws.

Section 4. List of Stockholders. The Corporation shall prepare, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting at least ten (10) days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting or (ii) during ordinary business hours at the principal place of business of the Corporation. If the meeting is to be held at a place, then the list shall also be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to the stockholders of the Corporation. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 4 or to vote in person or by proxy at any meeting of stockholders.

Section 5. Special Meetings. Special meetings of the stockholders, for any purpose or purposes, may be called (i) by the Secretary following receipt of one or more written demands to call a special meeting of the stockholders in accordance with, and subject to, this Section from stockholders of record who own in the aggregate at least a majority of the Corporation's duly issued and outstanding common stock then entitled to vote on the matter or matters to be brought before the proposed special meeting, or (ii) by the Chief Executive Officer or (iii) by the majority of the members of the Board of Directors then in office. A special meeting requested by stockholders shall be held at such date and time as may be fixed by the Board of Directors; provided, however, that the date of any such special meeting shall be not more than ninety (90) days after the request to call the special meeting is received by the Secretary.

Section 6. Notice of Special Meeting. Written notice of a special meeting stating the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting (as authorized by the Board of Directors in its sole discretion pursuant to Section 211(a)(2) of the DGCL), and the purpose or purposes for which the meeting is called, shall be given not fewer than ten (10) nor more than sixty (60) days before the date of the meeting, to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting, unless otherwise provided by statute, the certificate of incorporation or these bylaws. Notices of meetings to stockholders may be given by mailing the same, addressed to the stockholder entitled thereto, at such stockholder's mailing address as it appears on the records of the Corporation and such notice shall be deemed to be given when deposited in the U.S. mail, postage prepaid. Without limiting the manner by which notices of meetings otherwise may be given effectively to stockholders, any such notice may be given by electronic transmission in the manner provided in Section 232 of the DGCL. Notice of any meeting need not be given to any stockholder who shall, either before or after the meeting, submit a waiver of notice or who shall attend such meeting, except when the stockholder attends for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of the meeting shall be bound by the proceedings of the meeting in all respects as if due notice thereof had been given. Notices of special meetings shall specify the purpose or purposes for which the meeting has been called.

Section 7. Business of Special Meeting. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 8. Quorum; Adjournments. Section 8. Quorum; Adjournments. The holders of 33 1/3% of all shares of stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the certificate of incorporation or these bylaws. If, however, such quorum shall not be present or represented at any meeting of the stockholders, either the chairman of the meeting, or the holders of a majority of the shares of stock entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice, other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted that might have been transacted at the meeting as originally notified. If the adjournment is for more than thirty (30) days, a notice

of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting.

Section 9. Vote Required. When a quorum is present at any meeting, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the matter shall decide any matter brought before such meeting, other than the election of directors, unless a different or minimum vote is required by the certificate of incorporation, these bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or any law or regulation applicable to the Corporation or its securities, in which case such different or minimum vote shall be the applicable vote on the matter.

Section 10. Voting Power; Proxies. Unless otherwise provided in the certificate of incorporation, each stockholder shall at every meeting of the stockholders be entitled to one (1) vote, in person or by proxy, for each share of the capital stock having voting power held by such stockholder in the manner prescribed by the Corporation's certificate of incorporation, in person or by proxy authorized by an instrument in writing or by a transmission permitted by law, including Rule 14a-19 promulgated under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"). No stockholder of the Corporation shall be entitled to exercise any right of cumulative voting. Each stockholder entitled to vote at a meeting of stockholders or, if permitted by the Corporation's certificate of incorporation or these bylaws, to express consent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. Such authorization may be in a writing executed by the stockholder or his or her authorized officer, director, employee, or agent. To the extent permitted by law, a stockholder may authorize another person or persons to act for him or her as proxy by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization, or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that the electronic transmission either sets forth or is submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder. A copy, facsimile transmission, or other reliable reproduction of the proxy authorized by this Section 10 may be substituted for or used in lieu of the original writing or electronic transmission for any and all purposes for which the original writing or electronic transmission could be used, provided that such copy, facsimile transmission, or other reproduction shall be a complete reproduction of the entire original writing or electronic transmission. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary a revocation of the proxy or a new proxy bearing a later date. Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for the exclusive use by the Board of Directors.

Section 11. Conduct of Meetings. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding over any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are

appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the presiding person of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought

before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 12. Fixing Record Date.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall not be more than sixty (60) days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

(c) Unless otherwise restricted by the certificate of incorporation, in order that the Corporation may determine the stockholders entitled to express consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date for determining stockholders entitled to express consent to corporate action in writing without a meeting is fixed by the Board of Directors (i) when no prior action of the Board of Directors is required by law, the record date for such purpose shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, and (ii) if prior action by the Board of Directors is required by law, the record date for such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 13. Action Without Meeting. Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders.

Section 14. Nominations And Proposals By Stockholders at Annual Meetings.

(a) Stockholder Proposals. Only such business shall be conducted at the annual meeting of the stockholders as shall have been properly brought before the meeting. To be properly brought before the meeting, business must be:

- (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or a duly authorized committee thereof),
- (ii) otherwise properly brought before the meeting by or at the direction of the Board of Directors (or a duly authorized committee thereof), or

- (iii) otherwise properly brought before the meeting by a stockholder (A) who is a stockholder of record on the date of the giving of notice provided for in this Subsection 14(a) and on the record date for the determination of stockholders entitled to vote at such annual meeting and (B) who complies with the notice procedures set forth in this Subsection 14(a) (a "**Proposing Stockholder**").

In addition, any proposal of business must be a proper matter for stockholder actions. For business to be properly brought before an annual meeting by a Proposing Stockholder, the Proposing Stockholder must have given timely notice thereof in writing, containing all information required by paragraphs (I)-(II) of this Subsection 14(a), to the Secretary of the Corporation. To be timely, a Proposing Stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation not less than one hundred twenty (120) but no more than one hundred fifty (150) calendar days in advance of the one year anniversary of the previous year's annual meeting of stockholders; provided, however, that in the event that no annual meeting was held in the previous year or the date of the annual meeting has been changed so that it is more than thirty (30) days in advance of the one year anniversary of the prior year's annual meeting or more than sixty (60) days after the one year anniversary of the previous year's annual meeting, notice by the Proposing Stockholder to be timely must be so received not earlier than the close of business on the one hundred fiftieth (150th) day prior to such annual meeting and not later than the close of business on the later of the one hundred twentieth (120th) day prior to such annual meeting or the close of business on the tenth (10th) day following the day on which Public Disclosure of the date was made first made by the Corporation. In no event shall the Public Disclosure of an adjournment or postponement of an annual meeting commence a new notice time period (or extend any notice time period). For the purposes of this Section 14, "**Public Disclosure**" shall mean a disclosure made by the Corporation in a press release reported by the Dow Jones News Services, The Associated Press, or a comparable national news service or in a document filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14, or 15(d) of the Exchange Act.

A Proposing Stockholder's notice to the Secretary shall set forth as to each matter the Proposing Stockholder proposes to bring before the annual meeting:

I) Information Regarding the Proposal: (i) a description in reasonable detail of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, including why the Proposing Stockholder believes that the taking of the action or actions proposed would be in the best interests of the Corporation and its stockholders; (ii) a description in reasonable detail of any material interest of any Proposing Stockholder and any Associated Person (as defined below) in such business and a description in reasonable detail of all agreements, arrangements and understandings between the Proposing Stockholder or any Associated Person and any other person or entity in connection with the proposal; and (iii) the text of the proposal or business (including the text of any resolutions proposed for consideration and the text of any proposed amendment to these bylaws); and

II) Information Regarding the Proposing Stockholder: (i) the name and address of such Proposing Stockholder and any Associated Person, as they appear on the Corporation's books, and of the beneficial owner on whose behalf such proposal is being made; (ii) the class, series and number of shares of the Corporation directly or indirectly beneficially owned and held of record by the Proposing Stockholder or any Associated Person and such beneficial owner (including any shares of any class or series of the Corporation as to which such Proposing Stockholder or any Associated Person has a right to acquire beneficial ownership, whether such right is exercisable immediately or only after the passage of time); (iii) a representation (1) that the Proposing Stockholder is a holder of record of stock of the Corporation entitled to vote at the annual meeting and intends to appear at the annual meeting to bring such business before the annual meeting and (2) as to whether the Proposing Stockholder intends to deliver a proxy statement and

form of proxy to holders of at least the percentage of shares of the Corporation entitled to vote and required to approve the proposal and/or otherwise to solicit proxies or votes from stockholders in support of such proposal; (iv) a description

of (1) any option, warrant, convertible security, stock appreciation right or similar right or interest (including any derivative securities, as defined under Rule 16a-1 under the Securities Exchange Act, whether or not presently exercisable, with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of securities of the Corporation or with a value derived in whole or in part from the value of any class or series of securities of the Corporation, whether or not such instrument or right is subject to settlement in whole or in part in the underlying class or series of securities of the Corporation or otherwise, directly or indirectly held of record, owned beneficially, or otherwise owned or held by such Proposing Stockholder or any Associated Person and/or the beneficial owner on whose behalf the business is being proposed and (2) each other direct or indirect right or interest that may enable such Proposing Stockholder or any Associated Person and such beneficial owner to profit or share in any profit derived from, or to manage the risk or benefit from, any increase or decrease in the value of the Corporation's securities, in each case regardless of whether (x) such right or interest conveys any voting rights in such security to such Proposing Stockholder or any Associated Person and/or beneficial owner, (y) such right or interest is required to be, or is capable of being, settled through delivery of such security, or (z) such Proposing Stockholder or any Associated Person and/or beneficial owner may have entered into other transactions that hedge the economic effect of any such right or interest (any such right or interest referred to in this clause (iv) being a "**Derivative Interest**"); (v) any proxy, contract, arrangement, understanding or relationship pursuant to which the Proposing Stockholder or any Associated Person and/or beneficial owner has a right to vote any shares of the Corporation or which has the effect of increasing or decreasing the voting power of such Proposing Stockholder or any Associated Person and/or beneficial owner; (vi) any rights directly or indirectly held of record, beneficially, or otherwise by the Proposing Stockholder or any Associated Person and/or beneficial owner to dividends on the shares of the Corporation that are separated or separable from the underlying shares of the Corporation; (vii) any performance-related fees (other than an asset-based fee) to which the Proposing Stockholder or any Associated Person and/or beneficial owner may be entitled as a result of any increase or decrease in the value of shares of the Corporation or Derivative Interests; (viii) any other information that is required to be provided by the stockholder pursuant to Regulation 14A under the Exchange Act, in such Proposing Stockholder's capacity as a proponent to a stockholder proposal; and (viii) any other information reasonably requested by the Corporation.

Notwithstanding anything in these bylaws to the contrary, no business shall be conducted at any annual meeting except in accordance with the procedures set forth in this Subsection 14(a). The chair of the annual meeting shall, if the facts warrant, determine and declare at the meeting that business was not properly brought before the meeting and in accordance with the provisions of this Subsection 14(a), and, if he or she should so determine, shall so declare at the meeting that any such business not properly brought before the meeting shall not be transacted.

Notwithstanding the foregoing, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholder's meeting, stockholders must provide notice as required by the regulations promulgated under the Exchange Act.

(b) Stockholder Nominations. Only persons who are nominated in accordance with the procedures set forth in this Subsection 14(b) shall be eligible for election as directors. Nominations of persons for election to the Board of Directors may be made at a meeting of stockholders by or at the direction of the Board of Directors or by any stockholder of the Corporation entitled to vote in the election of directors at the meeting who complies with the notice procedures set forth in this Subsection 14(b) (each such stockholder, a "**Nominating Person**"). Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the Corporation in accordance with the timing provisions of Subsection 14(a). Such Nominating Person's notice shall set forth as to each person, if any, whom the stockholder proposes to nominate for election or re-election as a director (the "**Proposed Nominee**"):

- (i) Information Regarding the Proposed Nominee: (i) the name, age, business address, residence address, and principal occupation or employment of the Proposed Nominee; (ii) the information required by paragraph (II) of Subsection 14(a), if the Proposed Nominee were a Proposing Stockholder; (iii) any information relating to the Proposed Nominee that is required to be disclosed in solicitations of proxies for elections of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act; (iv) all information that would be required to be disclosed pursuant to Items 403 and 404 under Regulation S-K if the Nominating Person were the "registrant" for purposes of such rule and the Proposed Nominee were a director or executive officer of such registrant; (v) a completed questionnaire (in the form provided by the Secretary upon written request) with respect to the identity, background and qualification of the Proposed Nominee and the

background of any other person or entity on whose behalf the nomination is being made; (vi) a description of all agreements, arrangements, or understandings between or among any of (A) the Nominating Person, (B) the Proposed Nominee and any beneficial owner on whose behalf the nomination is being made, (C) any Associated Person of either the Nominating Person or the Proposed Nominee, and (D) any other person or persons (naming such person or persons), that relate to the nomination or pursuant to which the nomination or nominations are to be made by the Nominating Person or relating to the candidacy or service of the Proposed Nominee as a director of the Corporation; (vii) a written representation and agreement (in the form provided by the Secretary upon written request) that the Proposed Nominee and all Associated Persons (1) are not and will not become a party to (x) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how the Proposed Nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (y) any Voting Commitment that could limit or interfere with the Proposed Nominee's ability to comply, if elected as a director of the Corporation, with the Proposed Nominee's fiduciary duties under applicable law, (2) are not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed to the Corporation, and (3) if elected as a director of the Corporation, the Proposed Nominee would be in compliance and will comply, with all applicable publicly disclosed corporate governance, ethics, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation; and (viii) the consent of each nominee to be named in the proxy and accompanying proxy card and to serve as a director of the Corporation if so elected for a full term until the next meeting at which such nominee would face re-election. For such nominations, a representation that the stockholder intends or is part of a group which intends to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to elect any nominee and solicit the holders of shares representing at least 67% of the voting power of shares entitled to vote on the election of directors in support of director nominees other than the Corporation's nominees in accordance with Rule 14a-19 promulgated under the Exchange Act. The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

(II) Information Regarding the Nominating Person: The information required to be provided pursuant to paragraph (II) of Subsection 14(a) if the Nominating Person were a Proposing Stockholder, including any beneficial owner on whose behalf the nomination is being made.

No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Subsection 14(b). The chair of the meeting shall, if the facts warrant, determine and declare at the annual meeting that a nomination was not made in accordance with the provisions of this Subsection 14(b), and if he or she should so determine, shall so declare at the meeting that the defective nomination shall be disregarded.

Notwithstanding anything in this Subsection 14(b), to the contrary, in the event that the number of directors to be elected to the Board of Directors at the annual meeting is increased effective after the time period for which nominations would otherwise be due under this Section 14 and there is no public announcement by the Corporation naming the nominees for the additional directorships at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 14 with respect to nominations shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth (10th) day following the day on which such Public Disclosure is first made by the Corporation.

Notwithstanding anything to the contrary in this Section 14(b), in no event may a stockholder provide timely notice with respect to a greater number of director candidates than are subject to election by stockholders at the annual meeting or special meeting, as applicable.

Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at any meeting of the stockholders except in accordance with the procedures set forth in this Section 14(b).

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In addition to the requirements of this Section 14(b) with respect to any nomination proposed to be made at a meeting, each stockholder providing notice as to nominations pursuant to this Section 14(b) shall comply with all applicable requirements of the Exchange Act, with respect to any such nominations.

Notwithstanding the foregoing provisions of this Section 14(b), unless otherwise required by law, (i) no such stockholder shall solicit proxies in support of director nominees other than the Corporation's nominees unless such stockholder has complied with Rule 14a-19 promulgated under the Exchange Act in connection with the solicitation of such proxies, including the provision to the Corporation of notices required thereunder in a timely manner and (ii) if any such stockholder (1) provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act and (2) subsequently fails to comply with the requirements of Rule 14a-19(a)(2) and Rule 14a-19(a)(3) promulgated under the Exchange Act, including the provision to the Corporation of notices required thereunder in a timely manner, or fails to timely provide reasonable evidence sufficient to satisfy the Corporation that such stockholder has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act in accordance with the following sentence, then the Corporation shall disregard any proxies or votes solicited for such stockholder's candidates. If any such stockholder provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act, such stockholder shall deliver to the Corporation, no later than seven (7) business days prior to the applicable meeting, reasonable evidence that it has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act.

(c) Updates and Supplements. A Proposing Stockholder or a Nominating Person providing notice of business or any nomination proposed to be brought before an annual meeting pursuant to this Section 14 must further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 14 is true and correct at all times up to and including the date of the meeting (including any date to which the meeting is recessed, adjourned or postponed). Any such update and supplement must be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation, as promptly as practicable.

(d) Proxy Statement. A stockholder is not entitled to have its proposal or director nomination included in the Corporation's proxy statement and form of proxy solely as a result of such stockholder's compliance with the foregoing provisions of this Section 14. The foregoing notice requirements of this Section 14 shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his, her or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting.

(e) **Compliance with Applicable Law.** Notwithstanding the foregoing provisions of this Section 14, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to matters set forth in this Section 14; *provided, however*, that any references in these bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 14 (including clause (C) of the first paragraph of Subsection (a) and Subsection (b) hereof), and compliance with clause (C) of the first paragraph of Subsection (a) and Subsection (b) of this Section 14 shall be the exclusive means for a stockholder to submit other business or make nominations, respectively (other than, as provided in the final sentence of Subsection (d) hereof, business other than nominations brought properly under and in compliance with Rule 14a-8 of the Exchange Act, as may be amended from time to time). Nothing in this Section 14 shall be deemed to affect any rights of (i) stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the certificate of incorporation.

(f) **Associated Person.** An "**Associated Person**" of a person is (i) any person that is an associate of such person within the meaning of Rule 14a-1(a) under the Exchange Act and (ii) any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such person; the term "control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(g) **Attendance at Annual Meeting.** Notwithstanding the foregoing provisions of this Section 14, unless otherwise required by law, if the stockholder (or a qualified representative of the Proposing Stockholder) does not appear at the annual meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of

such vote may have been received by the Corporation. For purposes of this Section 14, to be considered a qualified representative of the Proposing Stockholder, a person must be a duly authorized officer, manager or partner of such Proposing Stockholder or must be authorized by a writing executed by such Proposing Stockholder or an electronic transmission delivered by such Proposing Stockholder to act for such Proposing Stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

ARTICLE III

DIRECTORS

Section 1. Number; Term of Office. The number of directors of this Corporation shall be fixed and may be changed from time to time by resolutions duly adopted by the Board of Directors or the stockholders, except as provided by law or the certificate of incorporation; *provided, however*, that no decrease in the number of directors shall have the effect of shortening the term of an incumbent director. Except as provided in Section 2 of this Article,

directors shall be elected by the holders of record of a plurality of the votes of the shares present in person or represented by proxy and entitled to vote on the election of directors at annual meetings of stockholders, and each director so elected shall hold office until such director's successor is duly elected and qualified or until such director's earlier resignation or removal. Directors need not be stockholders.

Section 2. Newly Created Directorships and Vacancies. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, even if less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next election of the class for which such directors were chosen and until their successors are duly elected and qualified or until their earlier resignation or removal. If there are no directors in office, then an election of directors may be held in the manner provided by statute.

Section 3. Resignation. Any director may resign at any time by notice given in writing or by electronic transmission to the Corporation. Such resignation shall take effect at the date of receipt of such notice by the Corporation or at such later effective date or upon the happening of an event or events as is therein specified. A verbal resignation shall not be deemed effective until confirmed by the director in writing or by electronic transmission to the Corporation.

Section 4. Removal. Except as prohibited by applicable law or the certificate of incorporation, the stockholders holding a majority of the shares then entitled to vote at an election of directors may remove any director from office with or without cause.

Section 5. General Powers. The business of the Corporation shall be managed by or under the direction of its Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the certificate of incorporation or by these bylaws directed or required to be exercised or done by the stockholders.

Section 6. Meetings. The Board of Directors of the Corporation may hold meetings, both regular and special, either within or without the State of Delaware.

Section 7. Quorum. Except as may be otherwise specifically provided by law, the certificate of incorporation or these bylaws, at all meetings of the Board of Directors, a majority of the directors then in office shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 8. Regular Meetings. Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the board.

Section 9. Special Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board or the Chief Executive Officer or a majority of the directors then in office.

Section 10. Notice of Meetings. Notice of the place, if any, date and hour of all special meetings of the Board of Directors shall be given to each director not less than twenty-four (24) hours before the meeting by telephone or electronic means; or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances. Meetings may be held at any time without notice if all the directors are present or if all those not present waive such notice in accordance with Section 2 of Article IV of these bylaws.

Section 11. Action Without Meeting. Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmissions are filed with the minutes of proceedings of the board or committee.

Section 12. Telephonic Meetings. Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

Section 13. Chairman of the Board. The Board of Directors shall annually elect one of its members to be its chair (the "Chairman of the Board") and shall fill any vacancy in the position of Chairman of the Board at such time and in such manner as the Board of Directors shall determine. Except as otherwise provided in these bylaws, the Chairman of the Board shall preside at all meetings of the Board of Directors. The Chairman of the Board shall perform such other duties and services as shall be assigned to or required of the Chairman of the Board by the Board of Directors.

Section 14. Committees of Directors. The Board of Directors may, by resolution, from time to time appoint one (1) or more committees as may be permitted by law, each committee to consist of one (1) or more of the directors of the Corporation. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors.

Such committees shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees but no such committee shall have the power or authority in reference to the following matters: (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval or (ii) adopting, amending or repealing any bylaw of the Corporation. The Board of Directors may designate one (1) or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence of disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

Any such committee, to the extent permitted by law and provided in the bylaws or the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it. Each committee shall keep regular minutes and report to the board of directors when required.

Section 15. Committee Minutes. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

Section 16. Compensation of Directors. Unless otherwise restricted by the certificate of incorporation or these bylaws, the Board of Directors shall have the authority to fix the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefore. Members of special or standing committees may be allowed compensation for attending committee meetings.

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ARTICLE IV NOTICES

Section 1. Manner of Notice. Whenever, under the provisions of the statutes or of the certificate of incorporation or of these bylaws, notice is required to be given to any director or stockholder, such notice may be given in writing, by mail or courier service, addressed to such director or stockholder, at such person's address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail or with the courier service. Notices may also be given personally in writing and such notice shall be deemed to be given at the time of receipt thereof. Notices also may be sent by electronic transmission shall be deemed effective as set forth in Section 232 of the DGCL. For purposes of this Section 1, "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process. An affidavit of the Secretary or an Assistant Secretary, the transfer agent or other agent of the Corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. Notice to directors may be given by telephone, email, facsimile or other electronic transmission.

Section 2. Waiver of Notice. Whenever any notice is required to be given under the provisions of the statutes or of the certificate of incorporation or of these bylaws, a waiver thereof in writing or by electronic transmission, signed or given by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

ARTICLE V OFFICERS

Section 1. Designation. The officers of the Corporation shall be chosen by the Board of Directors and shall consist of a Chief Executive Officer, one or more Presidents, one or more Vice Presidents, a Secretary, a Chief Financial Officer and such other officers and assistant officers as may be deemed necessary or desirable by the Board of Directors. The Board of Directors may also elect from its members a Chairman of the Board. Any number of offices may be held by the same person unless specifically prohibited by law. In its discretion, the Board of Directors may choose not to fill any office for any period as it may deem advisable.

Section 2. Election, Tenure and Duties of Officers. The Board of Directors at its first meeting after each annual meeting of stockholders, or as soon thereafter as is convenient, shall elect officers of the Corporation. New offices may be created and filled by the Board of Directors, and any vacancy occurring in any office because of death, resignation, removal, disqualification, creation of new offices or otherwise may be filled by the Board of Directors. Each officer of the Corporation shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors together with the powers and duties customarily exercised by such officer. Each officer shall hold office at the pleasure of the Board of Directors and until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as hereinafter provided. Any officer may resign at any time upon written notice to the Corporation.

Section 3. Removal. Any officer elected by the Board of Directors may be removed by the Board of Directors at its discretion, with or without cause, but such removal shall be without prejudice to the contractual rights of any such officer, if any, with the Corporation.

Section 4. Compensation. Compensation of all executive officers, except that of the Chief Executive Officer, shall be approved by the Board of Directors, a duly authorized committee thereof or by such officers as may be designated by resolution of the Board of Directors. The compensation of the Chief Executive Officer shall be determined, or recommended to the Board of Directors for determination, either by a compensation committee comprised of independent directors or by a majority of the independent directors on the Corporation's Board of Directors. The compensation of agents of the Corporation shall, unless fixed by the Board of Directors, be fixed by the Chief Executive Officer, by the President(s) or any Vice-President of the Corporation.

Section 5. Chief Executive Officer. The Chief Executive Officer shall, subject to the provisions of these by-laws and the control of the Board of Directors, have general supervision, direction, and control over the business of the Corporation and over its officers. The Chief Executive Officer shall perform all duties incident to the office of the

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Chief Executive Officer, and any other duties as may be from time to time assigned to the Chief Executive Officer by the Board of Directors, in each case subject to the control of the Board of Directors.

Section 6. President. The President shall report and be responsible to the Chief Executive Officer. The President shall have such powers and perform such duties as from time to time may be assigned or delegated to the President by the Board of Directors or the Chief Executive Officer or that are incident to the office of president.

Section 7. Vice Presidents. Each vice president of the Corporation shall have such powers and perform such duties as may be assigned to him or her from time to time by the Board of Directors, the Chief Executive Officer, or

the President, or that are incident to the office of vice president.

Section 8. Secretary and Assistant Secretary. The Secretary shall attend all meetings of the Board of Directors (other than executive sessions thereof) and all meetings of the stockholders and record all the proceedings of the meetings in a book or books to be kept for that purpose or shall ensure that his or her designee attends each such meeting to act in such capacity. The Secretary shall perform like duties for the standing committees of the Board of Directors when required. Under the Board of Directors' supervision, the Secretary shall give, or cause to be given, all notices required to be given by these bylaws or by law; shall have such powers and perform such duties as the Board of Directors, the Chairman of the Board, the Chief Executive Officer, the President(s) or these bylaws may, from time to time, prescribe; and shall have custody of the corporate seal of the Corporation. The Secretary, or an Assistant Secretary, shall have custody of and authority to affix the corporate seal to any instrument requiring it and when so affixed, it may be attested by such officer's signature or by the signature of such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his or her signature. The Assistant Secretary, or if there be more than one, any of the assistant secretaries, shall in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors, the Chairman of the Board, the Chief Executive Officer, the President(s) or the Secretary may, from time to time, prescribe. The Secretary and any Assistant Secretary shall have such other powers and perform such other duties as are incident to those positions and/or as may be prescribed by the Board of Directors or as may be provided in these bylaws. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

Section 9. Chief Financial Officer. The Chief Financial Officer shall be the principal financial officer of the Corporation and shall have such powers and perform such duties as may be assigned by the Board of Directors, the Chair of the Board, or the Chief Executive Officer.

Section 10. Other Officers and Agents. Officers, assistant officers and agents, if any, other than those whose duties are provided for in these bylaws, shall have such authority and perform such duties as may from time to time be prescribed by the Board of Directors.

Section 11. Bonds. When and if required by the Board of Directors, any officer of the Corporation shall give a bond or other security for the faithful performance of such officer's duties, in such amount and with such surety as the Board of Directors may require.

Section 12. Delegation. The Board of Directors may by resolution delegate the powers and duties of any officer to any such other officer or to any director, or to any other person whom it may select.

Section 13. Appointing Attorneys and Agents; Voting Securities of Other Entities. Unless otherwise provided by resolution adopted by the Board of Directors, the Chairman of the Board, the Chief Executive Officer, any President or any Vice President may from time to time appoint an attorney or attorneys or agent or agents of the Corporation, in the name and on behalf of the Corporation, to cast the votes which the Corporation may be entitled to cast as the holder of stock or other securities in any other corporation or other entity, any of whose stock or other securities may be held by the Corporation, at meetings of the holders of the stock or other securities of such other corporation or other entity, or to consent in writing, in the name of the Corporation as such holder, to any action by such other corporation or other entity, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consents, and may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal or otherwise, all such written proxies or other instruments as he or she

may deem necessary or proper. Any of the rights set forth in this Section 14 which may be delegated to an attorney or agent may also be exercised directly by the Chairman of the Board, the Chief Executive Officer, any President or any Vice President.

ARTICLE VI

CERTIFICATES OF STOCK

Section 1. Certificates. Every holder of fully paid stock in the Corporation shall be entitled to have a certificate, signed by any two authorized officers, certifying the number of shares owned by such stockholder in the Corporation; provided that the Board of Directors may provide by resolution or resolutions that some or all of any class or series shall be uncertificated shares that may be evidenced by a book-entry system maintained by the registrar of such stock. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of uncertificated shares shall be entitled to have a certificate or certificates for shares signed in the name of the Corporation.

If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualification, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock; provided that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock, a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 2. Signatures. Any or all of the signatures on the certificate may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if that person were such officer, transfer agent or registrar at the date of issue.

Section 3. Lost Certificates. The Corporation may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his or her legal representative, to advertise the same in such manner as it shall require

and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 4. Transfer of Stock. Subject to any applicable transfer restrictions, upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares, if any, duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Corporation to issue a new certificate (if such shares are to be certificated) to the person entitled thereto, cancel the old certificate and record the transaction upon its books. Uncertificated shares shall be transferred in accordance with applicable law.

Section 5. Registered Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VII

GENERAL PROVISIONS

Section 1.Dividends. Dividends upon the capital stock of the Corporation, subject to the provisions of the certificate of incorporation, if any, may be declared by the Board of Directors, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the certificate of incorporation.

Section 2. Reserves. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purposes as the directors shall think conducive to the interest of the Corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

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Section 3. Checks. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 4. Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 5. Seal. The Board of Directors may adopt a corporate seal having inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Section 6.Exclusive Forum. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim for breach of a fiduciary duty owed by any director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders,

(iii) any action asserting a claim arising pursuant to any provision of the DGCL, the certificate of incorporation or these bylaws, or (iv) any action asserting a claim governed by the internal affairs doctrine; *provided, however*, that this forum provision will not apply to any causes of action arising under the Securities Act of 1933, as amended, or the Exchange Act. If any action the subject matter of which is within the scope of Section 6 immediately above is filed in a court other than a court located within the State of Delaware (a "**Foreign Action**") in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce Section 6 immediately above (an "**FSC Enforcement Action**") and (ii) having service of process made upon such stockholder in any such FSC Enforcement Action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 6.

ARTICLE VIII

LIABILITY AND INDEMNIFICATION

Section 1. Limitation of Liability. To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or to its stockholders for monetary damages for any breach of fiduciary duty as a director. No amendment to, modification of or repeal of this Section 1 of this Article shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

Section 2. Indemnification. The Corporation shall, to the fullest extent authorized under the laws of the State of Delaware, as those laws may be amended and supplemented from time to time, indemnify, advance expenses, and hold harmless any person (a "**Covered Person**") who was or is or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether criminal, civil, administrative or investigative (a "**Proceeding**"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except for claims for indemnification (following the final disposition of such Proceeding) or advancement of expenses not paid in full, the Corporation shall be required to indemnify a Covered Person in connection with a Proceeding (or part thereof) commenced by such Covered Person only if the commencement of such Proceeding (or part thereof) by the Covered Person was authorized in the specific case by the Board of Directors of the Corporation. Any amendment, repeal or modification of Section 2 of this Article shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

Section 3. Expenses. To the fullest extent permitted by the DGCL, as now or hereafter in effect, and not prohibited by any other applicable law, expenses (including attorney's fees) incurred by a Covered Person in connection with any Proceeding shall be paid promptly by the Corporation in advance of the final disposition of such Proceeding; *provided, however*, that if the DGCL requires, an advance of expenses incurred by any Covered Person in his or her capacity as such (and not in any other capacity in which service was or is rendered by the indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon receipt of an undertaking by or on

behalf of such person to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified for such expenses by the Corporation as authorized in this Section 3 of this Article.

Section 4. Right of Claimant to Bring Suit. If a claim under Section 2 of this Article is not paid in full by the Corporation within ninety (90) days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim, together with interest thereon, and, if successful in whole or in part, the claimant shall also be entitled to be paid the expense of prosecuting such claim, including reasonable attorneys' fees incurred in connection therewith. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any Proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the Delaware General Corporation Law (or other applicable law) for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (or of its full board of directors, its directors who are not parties to the Proceeding with respect to which indemnification is claimed, its stockholders, or independent legal counsel) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the DGCL (or other applicable law), nor an actual determination by any such person or persons that such claimant has not met such applicable standard of conduct, shall be a defense to such action or create a presumption that the claimant has not met the applicable standard of conduct.

Section 5. Non-Exclusivity of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by or granted pursuant to this Article shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the certificate of incorporation, the bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the Covered Persons shall be made to the fullest extent permitted by law. The provisions of this Article shall not be deemed to preclude the indemnification of any person who is not specified as a Covered Person, but whom the Corporation has the power or obligation to indemnify under the provisions of the DGCL, or otherwise. The Corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL, or by any other applicable law.

Section 6. Insurance. To the fullest extent permitted by the DGCL or any other applicable law, the Corporation may purchase and maintain insurance on behalf of any person who is or was a Covered Person against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article.

Section 7 Amendment. Any amendment, repeal or modification of this Article VIII shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

ARTICLE IX
AMENDMENTS

In furtherance and not in limitation of the powers conferred upon it by the laws of the State of Delaware, the Board of Directors shall have the power to adopt, amend, alter or repeal the bylaws. The affirmative vote of a majority of the Board of Directors then in office shall be required to adopt, amend, alter or repeal the bylaws.

The stockholders shall also have power to adopt, amend or repeal the Bylaws of the Corporation; provided, however, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by the certificate of incorporation, the affirmative vote of the holders of at least a majority of the voting power of the shares of the then outstanding voting stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the bylaws of the Corporation.

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Exhibit 31.1

CEO Certification
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Phil Rafnson, certify that:

1. I have reviewed this report on Form 10-Q of Moving iMage Technologies, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

- c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
- a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 14, 2024 February 13, 2025

By: /s/ Phil Rafnson

Phil Rafnson

Chief Executive Officer

Exhibit 31.2

CFO Certification

Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, William F. Greene, certify that:

- 1. I have reviewed this report on Form 10-Q of Moving iMage Technologies, Inc.;
- 2. Based on your knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3. Based on your knowledge, the financial statements, and other financial information included in this report fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4. The registrant's other certifying office and I have been responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(t) and 15d-15(t)) for the registrant and have:

- a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on their most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
- a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 14, 2024 February 13, 2025

By: /s/ William F. Greene

William F. Greene

Chief Financial Officer

Exhibit 32.1

CERTIFICATION
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q for the period ended September 30, 2024 of Moving iMage Technologies, Inc. (the "Company") as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned, in

the capacities and on the dates indicated below, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to your knowledge:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company as of and for the periods presented in the Report.

By: /s/ Phil Rafnson

Phil Rafnson

Chief Executive Officer

November 14, 2024 February 13, 2025

By: /s/ William F. Greene

William F. Greene

Chief Financial Officer

November 14, 2024 February 13, 2025

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